

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LONDON-SIRE RECORDS, INC., et al.,	)	No. <b>1:04cv12434-NG</b>
	)	LEAD DOCKET NO.
Plaintiffs,	)	
	)	
	)	
-v.-	)	
	)	
DOE 1 et al.,	)	
	)	
Defendants.	)	
	)	

---

**REQUEST FOR LEAVE NUNC PRO TUNC TO FILE REPLY TO OPPOSITION TO  
MOTIONS TO STRIKE AND VACATE**

Doe filed two related motions which are pending: to strike the Linares declarations; and to vacate all orders granting immediate or expedited discovery which relied on said Linares declarations.

Plaintiffs filed an Opposition to said motions.

Doe filed a Reply to said Opposition but failed to request prior leave.

Plaintiffs moved to strike said Reply due to said failure to request prior leave.

Doe apologizes to the Court for its error and hereby requests, nunc pro tunc, leave to file said Reply for the following reasons:

Plaintiffs' Opposition raised issues which were not addressed in Doe's motions to strike the Linares declarations and vacate orders based on said declarations. Specifically, said Opposition raised issues of (A) Doe's standing; (B) mootness; (C) Linares declarations being based on personal knowledge rather than hearsay; (D) MediaSentry's investigations being exempt from Massachusetts private investigator licensing law due to (1) being an employee of an attorney; and (2) public availability of the information uncovered in the investigations.

Doe believes the Court will be interested in Doe's response to said issues and therefore requests leave to file said Reply nunc pro tunc and consideration of said Reply.

Subsequent to filing said Reply, Doe has received a copy of Safenet Incorporated's letter of January 10, 2008 (attached hereto as Exhibit B) to an assistant Legal Counsel in the Department of State Police in response to the Cease and Desist letter of January 2, 2008 (which was submitted as an Exhibit to said Reply). A copy of this letter, Exhibit B, may have been available to plaintiffs when they filed said Opposition but was not submitted to the Court by plaintiffs.

The arguments Safenet, Inc., made to the State Police as to the legality of Safenet/MediaSentry's investigations were completely different from the arguments made by plaintiffs in said Opposition.

Said letter said Safenet, Inc. does not hold itself out as being a private detective (an incorrect statement, in fact; see Exhibit A which is a web page accessed on May 12, 2008, comprising the following statements: "Investigating Piracy of Intellectual Property," "MediaSentry investigation service offers the most advanced scanning techniques," "Our interdiction services are tightly integrated with our investigation platform," and "Our Early Leak Detection Service proactively monitors piracy forums to quickly identify first leak file uploads and downloads files for investigation and source identification." Plaintiffs did not make such incorrect argument.

Said letter claimed an exemption because it "compiled data pertaining to the recording industry as an agent of a non-profit organization," which is incorrect because MediaSentry was never an "agent" in the normal legal sense of the term since it could not act for the non-profit organization and furthermore it was aware that the results of its investigations were not merely

statistical data but were instances of alleged infringements which it knew would be used by non-tax exempt plaintiffs in the law suits consolidated under the above caption. This argument was not made by plaintiffs and so it was apparently abandoned when its falsity was realized.

Said letter argued that “work \* \* \* performed for other [i.e., non-tax exempt] customers has been performed under the direction of, and as an agent of, an attorney of such [non-tax exempt] customers.” The letter did not argue that the work performed for Linares’s tax exempt employer, RIAA, was performed under the direction of, and as an agent of, an attorney. Plaintiffs conveniently presented a new but inconsistent argument, that MediaSentry was an agent of Linares who happens to be an attorney.

Safenet, Inc., also claimed that there are no Safenet, Inc., personnel, facilities, or supplies in the Commonwealth that are used to conduct the operations referenced in the Cease and Desist Order, an argument which is very questionable in view of a major facility of Safenet being located in Danvers, Mass., at 100 Conifer Hill Dr # 505, and the fact that it is not necessary to have personnel, facilities, or supplies located in Massachusetts to conduct an unlicensed investigation in violation of the Massachusetts licensing law.<sup>1</sup> Furthermore, Safenet failed to disclose that it is unlicensed in the states where its other facilities, personnel, and supplies are located, including all the states where the investigation operations originate and originated. Plaintiffs wisely did not offer this argument in said Opposition.

Plaintiffs argued in said Opposition that the information uncovered by MediaSentry was “publicly available,” but the public availability argument was wisely not made by Safenet in its letter to the Commonwealth.

Doe has been informed that Safenet’s letter has not convinced the Commonwealth to withdraw its Cease and Desist Order and so Doe believes it is still in effect.

The inconsistencies between Safenet's arguments in its letter to the State Police and plaintiffs arguments in its Opposition regarding legality of the investigations are very relevant to the credibility of MediaSentry's investigations and support Doe's motions to strike all the Linares declarations and to vacate all orders for expedited discovery based on said declarations.

Respectfully submitted,

JOHN DOE  
By its Attorneys

Dated May 13, 2008

/s/ Raymond Sayeg  
Raymond Sayeg, BBO #555437  
DENNER PELLEGRINO, LLP  
Four Longfellow Place, 35<sup>th</sup> Floor  
Boston, Massachusetts 02114  
(617 ) 742-1184

Attachments: Exhibits A and B

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system and will be served electronically to the registered participants identified on the Notice of Electronic Filing (NEF) and paper copies will be served on those indicated as non-registered participants.

/s/ Raymond Sayeg  
Denner Pellegrino LLP

**EXHIBIT A****Intellectual Property Protection with MediaSentry Services**

Protect your investment and revenue.

Global Locations

**Contact Us**

Request Information



Technical Support



General Contact



Find SafeNet Partner

Home &gt; Rights Management

**Intellectual Property Protection with MediaSentry Services**

SafeNet MediaSentry Services™ help software vendors monitor the continually evolving threat of software piracy and mitigate unauthorized distribution of their products. As a component of Unified Software Protection from SafeNet, MediaSentry Services provide continual intellectual property protection beyond your event horizon.

**Investigating Piracy of Intellectual Property**

SafeNet continuously monitors the Internet for pirated software and copyright infringements. Using the data collected, you are able to determine the scale and scope of your piracy problem. Gaining visibility into the extent of piracy can help you formulate and adapt your strategies for securing your software and protecting your intellectual property.

MediaSentry investigation service offers the most advanced scanning techniques available to find and index pirated content on the Internet. From worldwide peering points, SafeNet identifies online piracy in real-time by monitoring online auction communities, IRC networks, newsgroups, FTP sites, peer-to-peer communities and websites.

Once our intelligent scanning agents find infringing activity, all relevant data is logged in our extensive database and routed to specified client folders. Captured information is fully accessible, searchable and reportable through our proprietary enterprise application.

**Online/P2P Interdiction for Intellectual Property Protection**

MediaSentry interdiction services stem the trading of pirated content through seamless integration into popular piracy forums, effectively combating rampant online piracy. These intellectual property protection services combine a solid technology foundation with effective countermeasure techniques to

**Related Links**

- ▶ Software Protection
- ▶ Sentinel RMS
- ▶ Sentinel Hardware Keys
- ▶ **MediaSentry Services for Software Vendors**

**Related Documents**

- ▶ IDC Analyst Connection  
"Third-Party License Management: A Path to Lower Costs and Higher Returns"

**Product Briefs:**

- ▶ Unified Software Protection
- ▶ MediaSentry Services for Software Vendors

**Case Studies:**

- ▶ Enigma Data Solutions  
Replaces Macrovision's FlexLM with Sentinel RMS
- ▶ Sentinel RMS Case Study: PGS
- ▶ Sentinel RMS Case Study: Elekta

**News and Events**

- ▶ Webinar: "Licensing for Embedded Systems"

minimize the availability of pirated software online.

We employ research and intelligence experts who monitor the behavior of pirates seeking your products to identify countermeasure techniques that will be most successful. The MediaSentry Services proprietary technology platform then utilizes these techniques to make attempts to illegally download your content unfulfilling and frustrating. This customized approach ensures a solution that is flexible enough to adapt to evolving technologies and user patterns in order to achieve maximum results.

Our interdiction services are tightly integrated with our investigation platform, enabling close monitoring of the success of campaigns. A powerful reporting library, accessible through our enterprise application or via email, allows you to review the progress of enforcement campaigns in real-time.

#### **Early Leak Detection and Preemptive Protection of Intellectual Property**

Our Early Leak Detection Service proactively monitors piracy forums to quickly identify first leak file uploads and downloads files for investigation and source identification. Once piracy scanners have detected a potential leak, a series of automated processes are initiated that ensure an instant response from SafeNet and your intellectual property protection team. Early leak detection stems rapid proliferation across file-sharing networks in real-time.

#### **Online Auction Protection of Intellectual Property Rights**

Online auction communities, such as eBay, represent an additional threat for the distribution of pirated software and intellectual property. The complex and time-sensitive nature of online auction sites requires a sophisticated solution to facilitate the immediate identification and removal of illegal auctions. This program provides you with an effective and comprehensive platform to manage the enforcement process and execute auction takedowns in scale. Our managed services option eliminates client-driven manual review and further streamlines the enforcement process as MediaSentry auction managers become a virtual extension of your anti-piracy team.

#### **Intellectual Property Rights Management, Enforcement and Takedown**

SafeNet offers a comprehensive end-to-end case management enforcement tool to help you manage large-scale compliance takedown campaigns. Using our technology and enterprise service platform, you can create new cases for infringements found and send DMCA-compliant "Cease and Desist" notices to organizations, universities and service providers requesting the removal of infringing content. A full suite of compliance, escalation and workflow management options are available for configuration on a per-client basis. Litigation support to aid in prosecution of those who engage in illegal and unauthorized online distribution of your intellectual property is also available.

**For additional Intellectual Property Protection, consider our Anti-Piracy Products Information.**

For more information, please download the MediaSentry Product Brief and



contact us about Intellectual Property Protection.

[Company](#) | [Site Map](#) | [Privacy Statement](#) | [Contact Us](#) | [Send Feedback](#) | [Terms & Conditions of Sale](#)  
© 2008 SafeNet Inc. All rights reserved. | Use of this website signifies your agreement to the [Terms of Use](#)

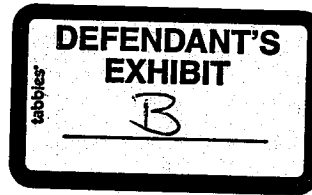
URL: [http://www.safenet-inc.com/products/sentinel/mediasentry\\_intellectual\\_property\\_protection.asp](http://www.safenet-inc.com/products/sentinel/mediasentry_intellectual_property_protection.asp) (5/12/08, font changed for instances of terms “investigating” and “investigation”)

**ER FROM SAFENET, INC.]**



DrinkerBiddle&Reath  
LLP

Barry Gross  
215-988-2872  
barry.gross@dbr.com



January 10, 2008

**BY FACSIMILE AND FEDERAL EXPRESS**

Shawn Farrell, Esq.  
The Commonwealth of Massachusetts  
Department of State Police  
485 Maple Street  
Danvers, MA 01923

RE: Cease and Desist Order regarding Mass. Gen. Laws ch. 147, § 22 -23 dated  
January 2, 2008 to Safenet, Inc.

Dear Mr. Farrell:

On January 2, 2008, our client Safenet, Inc. was sent an official Cease and Desist Order (the "Order") from the Department of State Police of the Commonwealth of Massachusetts. The Order referred to a violation of Mass.Gen. Laws ch. 147 (the "MGL"). It further instructed our client to restrict its operations on the grounds that Safenet, Inc.'s operations constitute unlicensed private investigations in violation of MGL § 22 -23.

As discussed last night, Safenet, Inc. does not advertise or hold itself out as being a private detective. To the extent that our website gives a different impression, we are modifying it so that it more accurately reflects our business. Moreover, any Safenet, Inc. operations that could arguably be characterized as investigations are excepted from MGL as a matter of law. Safenet, Inc. has compiled data pertaining to the recording industry as an agent of a non-profit organization, the Recording Industry Association of America ("RIAA"). This excepts us from licensure pursuant to MGL § 23(7). Through a telephone conversation on January 4, 2008 with the Internal Revenue Service, we have confirmed that RIAA is a non-profit, tax-exempt business association under Sec. 501(c)(6) of the Internal Revenue Code.<sup>1</sup> Also, work that could arguably be characterized as investigations performed for other customers has been performed under the direction of, and as an agent of, an attorney of such customers, which would except Safenet, Inc. under MGL § 23(6).

It should be noted that there are no Safenet, Inc. personnel, facilities, or supplies in the Commonwealth that are used to conduct the operations referenced in the Order. Our client's only contact with the Commonwealth in regard to these matters is that it has

Established  
1849

<sup>1</sup> We received confirmation from John Riley of the Internal Revenue Service, Identification No. 298386, at 1-877-829-5500.

~~Drinker Biddle & Reath~~

sent letters to persons residing in the Commonwealth on behalf of the RIAA or working as an agent for attorneys of other clients. These facts, and other circumstances, suggest no violation has occurred.

We appreciate you reviewing this situation. If you need any additional information or have any questions, please contact us directly.

Sincerely yours,

  
Barry Gross

BG

NS